

§ 563.36

12 CFR Ch. V (1-1-00 Edition)

(b) [Reserved]

[54 FR 49552, Nov. 30, 1989, as amended at 58 FR 4313, Jan. 14, 1993]

§ 563.36 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the OTS that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the OTS that its exercise of this authority is resulting in anti-competitive practices.

[61 FR 60184, Nov. 27, 1996]

§ 563.39 Employment contracts.

(a) *General.* A savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion pro-

vided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12

U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: *Provided*, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Director or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary of the continued operation of the association

(i) By the Director or his or her designee, at the time the Federal Deposit Insurance Corporation or Resolution Trust Corporation enters into an agreement to provide assistance to or on behalf of the association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) By the Director or his or her designee, at the time the Director or his or her designee approves a supervisory merger to resolve problems related to operation of the association or when the association is determined by the Director to be in an unsafe or unsound condition.

Any rights of the parties that have already vested, however, shall not be affected by such action.

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

(a) *Restrictions on transactions with affiliates and subsidiaries.* A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if the transaction is permissible under section 23A of the Federal Reserve Act, 12 U.S.C. 371c, and the additional restrictions set forth in this section, as follows:

(1) A savings association and its subsidiaries may engage in a covered transaction with an affiliate only if:

(i) In the case of any affiliate, the aggregate amount of covered trans-

actions of the savings association and its subsidiaries shall not exceed 10 percentum of the capital stock and surplus of the savings association; and

(ii) In the case of all affiliates, the aggregate amount of covered transactions of the savings association and its subsidiaries shall not exceed 20 percentum of the capital stock and surplus of the savings association;

(2) For purposes of paragraph (a)(1) of this section, any transaction by a savings association or its subsidiaries with any person shall be deemed to be a transaction with an affiliate to the extent that proceeds of the transaction are used for the benefit of, or transferred to, that affiliate;

(3) A savings association (or its subsidiary) may not make a loan or other extension of credit to an affiliate, unless the affiliate is engaged solely in activities described in 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2-2 of this chapter. For the purposes of this paragraph (a)(3), a loan or other extension of credit includes a purchase of assets from an affiliate that is subject to the affiliate's agreement to repurchase the assets. Such a purchase of assets, however, will not be considered a loan or other extension of credit if the savings association (or its subsidiary) has entered into a transaction or series of transactions that meets all of the following requirements:

(i) The savings association (or its subsidiary) purchases United States Treasury securities from the affiliate, the affiliate agrees to repurchase the securities at the end of a stated term, the remaining term of the securities purchased by the savings association (or its subsidiary) exceeds the term of the affiliate's repurchase agreement, and the savings association (or its subsidiary) has possession or control of the securities and the right to dispose of the securities at any time during the term of the agreement and upon default.

(ii) The affiliate purchases United States Treasury securities from the savings association (or its subsidiary) and the savings association (or its subsidiary) agrees to repurchase the securities at the end of a stated term.